

BROOKS, PIERCE, McLENDON, HUMPHREY & LEONARD, L.L.P.

ATTORNEYS AT LAW

RALEIGH, NORTH CAROLINA

**MAILING ADDRESS
POST OFFICE BOX 1800
RALEIGH, N.C. 27602**

**OFFICE ADDRESS
SUITE 1600
FIRST UNION CAPITOL CENTER
150 FAYETTEVILLE STREET NALL
RALEIGH, N.C. 27601**

DOCKET FILE COPY ORIGINAL

**TELEPHONE 919-839-0300
FACSIMILE 919-839-0304**

FOUNDED 1897

L.P. McLENDON, JR.
HUBERT HUMPHREY
EDGAR B. FISHER, JR.
W. ERWIN FULLER, JR.
JAMES T. WILLIAMS, JR.
WADE H. HARGROVE
M. DANIEL McGINN
MICHAEL D. MEEKER
WILLIAM G. McNAIRY
EDWARD C. WINSLOW III
HOWARD L. WILLIAMS
GEORGE W. HOUSE
WILLIAM P.H. CARY
REID L. PHILLIPS
ROBERT A. SINGER
JOHN H. SMALL
RANDALL A. UNDERWOOD
S. LEIGH RODENBOUGH IV
WILLIAM G. ROSS, JR.
MARK J. PRACK
JILL R. WILSON
MARC D. BISHOP
JIM W. PHILLIPS, JR.
MACK SPERLING
JEFFREY E. OLEYNIK
MARK DAVIDSON
JAMES R. SAINTSING
JOHN W. ORMAND III
ROBERT J. KING III

STEVEN J. LEVITAS
V. RANDALL TINSLEY
JOHN R. ARCHAMBAULT
S. KYLE WOOSLEY
DANIEL M. SROKA
FORREST W. CAMPBELL, JR.
MARCUS W. TRATHEN
JEAN C. BROOKS
ELLEN P. HAMRICK
JAMES C. ADAMS, II
ALLISON M. GRIMM
ELIZABETH S. BREWINGTON
H. ARTHUR BOLICK II
NATASHA RATH MARCUS
JOHN M. CROSS, JR.
JENNIFER K. VAN ZANT
KEARNS DAVIS
DAVID W. SAR
KATHLEEN M. THORNTON
BRIAN J. McMILLAN
JENNIFER L. BOLICK
DAVID KUSHNER
DEREK J. ALLEN
ELIZABETH V. LAFOLLETTE
GINGER S. SHIELDS
HAROLD H. CHEN
COE W. RAMSEY
NATALIE KAY SANDERS
ROBERT W. SAUNDERS

RECEIVED

AUG 2 1999

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

August 2, 1999

AUBREY L. BROOKS (1872-1958)
W.H. HOLDERNESS (1904-1965)
L.P. McLENDON (1890-1968)
KENNETH M. BRIM (1898-1974)
C.T. LEONARD, JR. (1929-1983)
CLAUDE C. PIERCE (1913-1988)
THORNTON H. BROOKS (1912-1988)
G. NEIL DANIELS (1911-1997)

**GREENSBORO OFFICE
2000 RENAISSANCE PLAZA
230 NORTH ELM STREET
GREENSBORO, N.C. 27401**

**WASHINGTON OFFICE
2000 L STREET N.W., SUITE 200
WASHINGTON, D.C. 20036**

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A306
Washington, D.C. 20554

**Re: Comments of Minority Members of the North Carolina Association of
Broadcasters, MM Docket No. 99-25**

Dear Ms. Salas:

Transmitted herewith on behalf of Minority Members of the North Carolina Association of Broadcasters are an original and nine (9) copies of Comments for filing in the above-captioned proceeding.

If any questions should arise during the course of your consideration of this matter, it is respectfully requested that you communicate with this office.

Sincerely,

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.

Wade H Hargrove

Wade H. Hargrove

Enclosures

b7D
No. 61 Copies Rec'd
LHM ABCDE

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED

AUG 2 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	MM Docket No. 99-25
)	
Creation of a)	RM-9208
Low Power Radio Service)	RM-9242

To: The Commission

**COMMENTS OF MINORITY MEMBERS OF THE
NORTH CAROLINA ASSOCIATION OF BROADCASTERS**

James Rouse, owner of WTOW(AM) and owner of The Minority Voice, Inc., licensee of WOOW(AM); Dr. James E. Carson, owner of WCCG(FM); William and Vera Hollingsworth, owners of W & V Broadcasting Enterprises, Inc., licensee of WMFA(AM) and WCIE(AM); and John Hall, owner of Sky City Communications, Inc., licensee of WYAL(AM), minority members of the North Carolina Association of Broadcasters ("NCAB") (collectively, the "Minority Members"), by their attorneys, hereby file the following comments in response to the *Notice of Proposed Rule Making* ("Notice"), FCC 99-6, released February 3, 1999, in the above-captioned proceeding. The *Notice* seeks comment on a wide variety of issues related to whether the Commission should establish three new classes of low power radio or microradio service in the FM band.

WOOW(AM), Greenville, North Carolina, is a Class C station operating with 1000 watts ERP at 1340 kHz in a community of 57,005. WOOW's format is a mixture of gospel, urban contemporary, and talk. WCCG(FM), Hope Mills, North Carolina, is a Class A station operating with 6000 watts ERP at 104.5 MHz in a community of 9798. WCCG is a community-oriented

No. of Copies rec'd 0+9
List ABCDE

station broadcasting an urban/oldies format. WMFA(AM), Raeford, North Carolina, is a Class C station operating with 1000 watts ERP at 1400 kHz. WMFA broadcasts a gospel format to its community of 3855. WYAL(AM), Scotland Neck, North Carolina, is a Class D station operating with 5000 watts ERP, daytime only, at 1280 kHz. WYAL, which has been on the air since 1960, is a full-service gospel format station serving a community of 2453. WCIE(AM), Spring Lake, North Carolina, is a Class C station operating with 1000 watts ERP at 1450 kHz. WCIE broadcasts a gospel format to its community of 7820. WTOW(AM), Washington, North Carolina, is a Class D station operating with 1000 watts ERP, daytime only, at 1320 kHz. WTOW broadcasts a format of black gospel to its community of 9263.

The Minority Members oppose the proposals set forth in the *Notice*. As NCAB shows in its joint comments with the Virginia Association of Broadcasters (“VAB”), which the Minority Members fully endorse, low power FM (“LPFM”) is premature, is an inefficient use of spectrum and technically irrational, will destroy radio reading services for the blind and other subcarrier services, will devastate existing small market community broadcasters, will not increase opportunities for women and minorities to own broadcast stations, and will not solve the pirate problem.

The Minority Members file these separate comments to emphasize the truly devastating effect that the Commission’s LPFM proposals will have on existing minority broadcasters. The Minority Members are at a loss to understand the Commission’s calculus that appears to prize so-called “new” opportunities for minority *would-be* broadcasters over the sweat and equity already invested by *existing* minority broadcasters. The threat LPFM poses to existing minority and women broadcasters is palpable.

As NCAB and VAB show in their comments, customized survey data provided by Arbitron demonstrate, upon analysis, that many listeners of existing full power community broadcasters reside

outside the stations' current protected contours. On average, more than one third (34.5%) of the surveyed radio listeners of the sample Class A FM stations reside outside the stations' 60 dBu contours. In the case of some stations, nearly 9 out of every 10 actual listeners live, commute, and work outside of the protected contour of one of their favorite radio stations. If LPFM is implemented as proposed, many minority-owned or operated stations could lose a significant portion of their audience, and, consequently, the advertising dollars that keep these community radio stations on the air.

Even AM broadcasters, such as some of the Minority Members, will be devastated by LPFM, for the advertising pie in small markets simply cannot be sliced into any more pieces. As a general matter, the Minority Members believe that the Commission's LPFM proposals either will force small broadcasters off the air or will force them to go to satellite-delivered automatic programming. Either result means a loss of locally-produced programming. The proposals will, therefore, actually increase homogeneity instead of foster diversity. Such a result is anathema to the Minority Members.

Because of their relatively small service area, LPFM stations will be hard-pressed to generate much interest among advertisers. Obviously, if LPFM stations cannot generate advertising revenue, they will be unable to subsist as a commercial service. However, existing full power small market minority broadcasters will be critically hurt when those advertising dollars go to their bigger and stronger full power competitors. Already minority-owned stations face entrenched obstacles in garnering essential advertising support. If minority-owned stations lose large portions of their audience, they will never be able to overcome those obstacles and will necessarily fail as a consequence.

Even authorized as a noncommercial service, LPFM would harm existing commercial full

power stations, such as that owned by Dr. James Carson and other similarly situated minority broadcasters, if second and third adjacent channel interference protection standards are reduced or eliminated, as the increased interference would necessarily cause thousands of existing listeners for each station, and perhaps millions nationwide, to be unable to receive a listenable signal.

Quite simply, the Minority Members submit that the elimination of existing, documented service—either as a result of interference or as a consequence of economic debilitation—is not in the public interest.

Low power FM is bad engineering policy and bad social policy. Nearly every aspect of LPFM has already been tried or considered—and rejected—as the history of modern FM broadcasting unequivocally proves. It would be foolhardy to repeat these mistakes, especially since the laws of physics have not changed.

From an engineering policy perspective, the LPFM proposals cannot overcome their inherent technical limitations if the FM spectrum is to maintain any integrity at all. In fact, the Commission's LP1000 and LP100 proposals are far less spectrally efficient than all existing full-power station classes. The plain reality of the FM band is that LPFM stations simply cannot be dropped into the current allotment grid without either severely increasing interference or destroying existing service.

From a social policy perspective, the purported goals of LPFM cannot be achieved: LPFM stations cannot be placed in large urban markets; minority and women will not necessarily become the owners of LPFM stations, and, to the extent they do, they may become trapped in the economic folly of inferior facilities; and the pirate problem will not be ameliorated. And, perhaps most significantly, existing community broadcasters, especially small market minority broadcasters such as the Minority Members, will be harmed the most.

For all of the above reasons, the Minority Members respectfully urge the Commission to abandon the notion of creating a new low power FM broadcast service.

Respectfully submitted,

By: Wade H. Hargrove
Wade H. Hargrove

Mark J. Brak
Mark J. Brak

David Kushner
David Kushner

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.
First Union Capitol Center
Suite 1600 (27601)
Post Office Box 1800
Raleigh, North Carolina 27602
Telephone: (919) 839-0300
Facsimile: (919) 839-0304

*Counsel for the Minority Members of the
North Carolina Association of Broadcasters*

August 2, 1999